IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 9685 of 1995

Between:

1 Mutyala Okkayya, S/o China Polayya,
R/o Nandivoya (V), Podalakur (M),
Nellore District.
2 Annam Seshayya, S/o Venkayya,
R/o Nandivoya (V), Podalakur (M),
Nellore District.

..... PETITIONERS.

AND

1 The Joint Collector, Nellore.
2 Revenue Divisional Officer, Nellore.
3 Mandal Revenue Officer Podalakur, Nellore District.
4 Pandipati Srinivasulu Reddy, R/o Nandivoya (V), Podalakur (M),
Nellore District.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction particularly one in the nature of writ of Mandamus declaring the order of the Mandal Revenue Officer, Podalakur (M), Nellore District the 3rd respondent herein in his Procs.No.Rc.B.9/95, dt: 30-3-1995 providing pathway with a width of 25 links in the petitioners lands 63 cents in S.No.35/1 assigned to the 1st petitioner and 54 cents in S.No.35/11 assigned to the 2nd petitioner of Nandivoya Village, Podalakur Mandal, Nellore District without issuing notice and without holding any enquiry is illegal, arbitrary, mala fide and without jurisdiction and set-aside the same.

Counsel for the Petitioners: MR.P.SRIDHAR REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE (Assignments)

Counsel for the Respondent No.4: None appeared.

The Court made the following :

ORDER:

Heard Sri P.Sridhar Reddy, the learned counsel appearing for the petitioners and the learned Government Pleader for Revenue (Assignments) for the respondents 1 to 3.

The petitioners herein, who claimed to be in possession of the land in Survey Nos.35/1 and 35/11 on the basis of the assignments made earlier situated in Nandivoya village, Podalakur Mandal, Nellore District, filed this writ petition, *inter alia,* seeking to assail the impugned orders dated 30.03.1995 passed by the third respondent herein in his proceedings No.Rc.B.9/95 resuming the land of the petitioners as illegal.

Though several contentions have been urged across the Bar on both the sides and as evident from the counter affidavit, it is stated that the notices in Form No.I were issued to the petitioners on 14.03.1995 and the same were served on 22.03.1995, the impugned proceedings were passed on 30.03.1995. As rightly pointed out on behalf of the petitioners that as per Rule 3 of the Rules framed under the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (Act 9 of 1977) Form No.I notice has to be dispatched within a period of 15 days before conducting enquiry for enabling the party concerned to file explanation and it is only thereafter orders have to be passed. Even without awaiting the said expiry period of 15 days, the impugned orders have been passed which itself certainly opposed to the principles of natural justice and the mandate as contained under the very Statute in respect of which the action has sought to be done. Admittedly, no opportunity was given to the petitioner before passing the impugned orders. I do not find any justification to go into the merits of the case.

The writ petition is accordingly allowed, setting aside the impugned orders

dated 30.03.1995. It shall be open to the respondent No.3 to issue fresh notice and pass appropriate orders after giving sufficient opportunity to the petitioner.

_____

B. PRAKASH RAO, J

17th March 2005.

Chvn.

That Rule NISI has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday, the seventeenth day of March two thousand and five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Joint Collector, Nellore.
2 Revenue Divisional Officer, Nellore.
3 Mandal Revenue Officer Podalakur, Nellore District.
4 Two C.Cs. to the G.P. for Revenue (Assignments), High Court Buildings, Hyderabad (OUT).

5 Two C.D. Copies.